



Osgoode Hall Law School of York University
Osgoode Digital Commons

Articles & Book Chapters

Faculty Scholarship

1983

Book Review: Assault on the Worker: Occupational Health and Safety in Canada by Charles E. Reasons, Lois L. Ross and Craig Paterson

Eric M Tucker

Osgoode Hall Law School of York University, etucker@osgoode.yorku.ca

Source Publication:

Labour/Le Travailleur

Follow this and additional works at: https://digitalcommons.osgoode.yorku.ca/scholarly_works



Part of the [Labor and Employment Law Commons](#)



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](#).

Recommended Citation

Tucker, Eric. "Book Review: Assault on the Worker: Occupational Health and Safety in Canada by Charles E. Reasons, Lois L. Ross and Craig Paterson" *Labour/Le Travailleur* 11 (1983): 267-269.

This Book Review is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.

by far the best discussion of these large and difficult issues in arbitration law that I have yet located. The book is worthwhile for this alone, but Adams does not stop there. The second part of the book is an empirical study of 654 disciplinary discharge cases in Ontario between 1970 and 1974. There is precious little empirical work undertaken by lawyers and this is a valuable addition to our understanding of how labour law really works. Adams' objective, of course, is to seek empirical answers to questions generated by a discussion of the arbitral law of discharge. Do the theories being applied by arbitrators work or not? Is reinstatement of employees working? Anyone involved in the arbitration process will be intrigued by the many questions to which Adams' data offer some surprising answers. Who reinstates more often — tripartite boards or sole arbitrators? What is the effect of delay in the holding of a hearing upon the award of back pay? On reinstatement? Which industrial offences lead to reinstatement and which do not? How many of those reinstated actually return to work? How many of these remain at work? Does the age or seniority of the employee have an effect? Those involved in the grievance arbitration process will have views on many of these questions. Discovering whether one's intuitions are congruent with the data makes, in my view, for a compelling, if brief, read.

My enthusiasm for all three of these volumes is evident. These books by leading Canadian labour lawyers are to be welcomed.

Brian Langille
University of Toronto

Charles E. Reasons, Lois L. Ross and Craig Paterson, *Assault on the Worker: Occupational Health and Safety in Canada* (Toronto: Butterworths 1981).

THE LITERATURE ON occupational health and safety has been steadily expanding

over the last ten years and can roughly be divided into two categories. First, there is a body of work which has sought to demonstrate that occupationally related injuries, disease, and deaths have reached unacceptably high levels and that some action must be taken to stop this workplace carnage. One strategy is to change the conventional wisdom about the range of injuries and diseases which can be attributed to occupational exposures, by shifting away from a narrow focus on traumatic injuries toward a concern with overall health effects. Another strategy is to characterize the problem as one of controlling criminal behaviour by employers, as is exhibited by instances in which employers have either ignored or suppressed evidence that continued exposure to some substance in the workplace was likely to have an adverse impact on workers' health. The primary goal of much of this literature is to inform those at risk of the dangers they face and to mobilize public support for state intervention.

A second category of literature tends to be of a more academic variety and grows out of the debates surrounding the desirability and effectiveness of regulatory responses to the problem of occupational health and safety. Much of that literature is inspired by neo-conservative critiques of government intervention in the market place and calls for a retreat from direct regulation in favour of a vision of the state's role as one of facilitating market transactions or in the face of market failure, identifying the result the market would have arrived at by use of a variety of instruments such as injury taxes, inducing private parties to move towards the equilibrium market position. Liberal criticisms of the more extreme versions of neo-conservative attacks on occupational health and safety regulation emphasize that markets have failed, pointing to factors such as the severe information problems which constrain bargaining especially when dealing with occupational exposure to carcinogens and other toxic

substances whose long-term effects are unknown. Liberals also acknowledge that, at some point, questions of fairness must also be addressed. Nevertheless, market mechanisms are not wholly rejected and an economic perspective on the crucial question of how much protection should be mandated in the face of market failure is maintained. Problems with the distribution of wealth and power are not wholly ignored, but the major focus tends to be on efficiency.

Assault on the Worker has something of both approaches but its dominant focus is that of the literature of outrage: to inform and mobilize. As its title implies, the book starts from the premise that the failure of employers to provide safe work places constitutes criminal behaviour and should be treated as such by our legal institutions. Five chapters are devoted to describing the dimensions of the problem with special attention given to some aspects of occupational health and safety which have received scant attention until recently: toxic substance exposures, stress, women's health, and farming. These chapters, combined with the Appendices provide valuable information and resources in readily accessible form and in my view are the most useful part of the book.

Part III of the book turns its attention to some of the current approaches to the problem of occupational health and safety, focusing on the "blame the worker" syndrome, workers' compensation, and direct regulation. It is this part of the book that I find disappointing, not because the criticisms of the current approaches are undeserved, but rather because it lacks a unifying focus and fails to provide a more comprehensive perspective from which to analyze the problem. Take the case of workers' compensation, a major target of criticism in this part of the book. Workmen's Compensation Boards are characterized as bureaucracies that tend to view their role primarily as one of providing low-cost insurance for

employers. By controlling costs, they provide an environment conducive to rational investment planning. It is bemoaned that compensation is not employed as an integral part of a broader attempt to improve health and safety conditions. With respect to workers, the Boards are criticized for limiting their objectives to providing minimal levels of compensation to those who are inevitably injured in the production process. The coverage is not comprehensive, the levels of compensation are inadequate and the bureaucracy is often unsympathetic. All this has been said before, but does bear repeating.

The weakness of this analysis is the failure to go beyond these specific criticisms. With respect to the problem of compensation, is it rational to restrict our perspective to that of compensation for occupationally related injuries and accidents? By doing so we force decision-makers to draw difficult distinctions about the causes of disability because they must decide whether or not the claimant will get WCB benefits or be forced to resort to welfare or private resources if such are available. Should the right to a decent level of support depend on whether or not you can link your heart disease or lung cancer to occupational as opposed to environmental or life style factors? Admittedly, so long as workers' compensation does provide higher levels of benefits than alternative programs workers will fight to have the range of compensable injuries and diseases expanded. Nevertheless, a broader perspective on the compensation question might have contributed to a better analysis of the political and economic background of the problem as it appears in Canada, and to an alternative strategic response.

Furthermore, if we are going to explore workers' compensation as a mechanism for improving the conditions of employment, indignation at the failure of Boards to impose significant penalty assessments is only a first step in, but not a substitute for, analysis. Yes, the theory does state that the rational profit maximiz-

ing firm will seek to find the point at which the sum total of accident costs and accident prevention costs are minimized. If accident costs including penalty assessments rise to a level at which it becomes cheaper to invest in safety, then we would expect the firm to do so. But, what happens where the sum total of accident costs and accident prevention costs that the firm has to bear is increased absolutely? Will profits decline, or will the costs be passed on or will there be pressure to reduce wages or will the factory be shut down altogether? This is not intended to be an argument against mandating higher safety standards. Rather, I am simply suggesting that the limitations of regulatory solutions be recognized given the freedom of capital to move across provincial and national borders, as well as the non-competitive nature of much of industry.

The book then fails to go significantly beyond the literature of indignation. It does not, in fact, confront the neo-conservative and liberal styles of economic and regulatory analysis which have dominated the academic literature. Dissemination of information and mobilization are important objectives but, as well, it is necessary to place the problem of occupational health and safety within the broader context of capitalist accumulation. If capitalist production is taken as a given, then the trade-off between jobs and safety may indeed be real and the choices cruel. If not, then the strategy for improving worker health and safety may take a different course. This leads to the last point which may be of particular interest to labour historians. How in fact do workers respond to the allocation of risk in a capitalist setting? The authors have made some attempt to place the problem in an historical context. There is a brief discussion of the historical origins of Workmen's Compensation legislation (160-4) and a chapter exploring worker struggles for improved work conditions including shorter hours, improved facilities in work camps, and mine safety. There is no

attempt to do more than survey the field relying primarily on existing literature, which is scant to say the least. Much work remains to be done. To what extent was the market accepted as the ground on which struggles over working conditions would be fought? Did workers trade health and safety for higher wages? What was the role of organized labour in pressing for state regulation such as the Factory Acts in the late nineteenth century? While much has been written about the emergence of an industrial working class both with respect to its organizational and political manifestations and its culture, little attention has been paid to the specific response to workplace hazards.

In sum, the book attempts to synthesize a growing body of literature from a worker perspective. In so doing it provides valuable resource material and challenges many of the dominant assumptions about the causes, extent and appropriate responses to occupational ill-health and unsafety. Yet, the failure to locate the problem within the larger context of capitalist production and the current economic crisis weakens the critique of current approaches and limits the exploration of alternatives.

Eric Tucker
Osgoode Hall Law School
York University

Noah M. Meltz, Frank Reid, and Gerald S. Swartz, *Sharing the Work: An Analysis of the Issues in Worksharing and Jobsharing* (Toronto: University of Toronto Press 1981).

THE PURPOSE OF WORKSHARING is to provide an alternative to a temporary layoff. It is a measure designed to keep workers in existing jobs when demand for their services declines. Instead of reducing the number of workers employed during a period of lowered demand, the available work is shared by a reduction in